



Gary Hunter

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The ARO Corporation
File: B-225727
Date: June 15, 1987

DIGEST

1. Failure by bidders to identify precisely the products they were bidding under qualified products requirement does not render bids nonresponsive where the bidders took no exception to solicitation requirement that products be qualified.
2. Where solicitation clause provides that qualification of product may be completed up to time of award, compliance with clause is matter of responsibility, not responsiveness, and detailed information on product qualification, if needed, may be provided to agency any time before award.

DECISION

The ARO Corporation protests the award of contracts to any firms other than itself for line items 4, 5, 7, 10, 14, and 16 in the bid schedule of invitation for bids (IFB) No. FCEP-BL-F6214-S-12-4-86, issued by the General Services Administration (GSA). The IFB is to meet Federal Supply Schedule requirements for pneumatic drills, grinders, riveters, hammers, and other tools. We deny the protest.

The IFB's bid schedule briefly described the product, indicated the applicable federal specification, and required product qualification for each of the protested line items. For each of these items, estimated quantities were listed and a space was provided for an item price.

The IFB also contained the Qualification Requirements clause set forth in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 52.209-1 (1985), the clause largely in issue here. The clause defines "qualification requirement" as a requirement for testing or other quality assurance that must be completed by a bidder before the award of a contract, and states that "the product, manufacturer or offeror must be qualified by the time of award whether or not the name of the product, manufacturer, or offeror is actually

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included on" the applicable qualification list. The clause further provides that bidders are to contact the contracting agency to obtain the qualification requirements and to have their products tested for qualification purposes. Finally, the clause (1) requests that bidders offering already-qualified products furnish the manufacturer's name, the item name and the qualification test number "to the extent known"; (2) requires bidders offering products that are qualified but not yet on a qualification list to submit evidence of qualification with the bid; and (3) provides that if the product that is or will be qualified before award is not identified in the bid, the bid will be rejected.

The low bidders for line items 4 and 5 (Master Power, Inc.), item 10 (Sioux Tools, Inc.), and item 14 (Allen Bradley-Rockwell International Co.) all offered already-qualified products and listed qualification test numbers for the products. The low bidder for line item 7, Ingersoll-Rand Co., stated that qualification had been applied for, but that qualification tests had not been completed. The low bidder for line item 16, T.C. Service Co., listed the item's national stock number and furnished evidence that it had applied for testing in order to become qualified. Most bidders merely referred to the IFB item number in providing information under the clause; no bidder furnished detailed descriptions of offered products.

ARO alleges that these low bids on the protested line items are nonresponsive because the bidders failed to identify their offered products adequately, and thus did not provide the precise type of information required by clause 52.209-1. ARO takes the position that bids were required to contain some detailed description of the offered product--such as a model name or number--in order to be responsive. ARO seeks the awards under these line items as the low responsive bidder.

GSA argues that the effect of the failure of the bidders under these line items to insert information called for in clause 52.209-1 is a matter pertaining to their responsibility, not the responsiveness of their bids. The agency states that the information sought under this clause is simply intended for use in determining whether the bidders can comply with the requirement that their products be qualified by the time of award. GSA points out that the FAR, 48 C.F.R. § 9.202(c) (1986), specifically provides that a prospective contractor may not be denied an opportunity to have its bid considered for award solely because the item is not on a list of qualified products or has not been identified as meeting a qualification requirement so long as the prospective contractor demonstrates that it can meet the

standards for qualification before the date specified for contract award. We agree with GSA.

Responsiveness concerns whether a bidder has unequivocally offered to provide supplies in conformity with all material terms and conditions of a solicitation. The ARO Corp., B-222486, June 25, 1986, 86-2 C.P.D. ¶ 6. Only where a bidder provides information with its bid that reduces, limits or modifies a solicitation requirement, may the bid be rejected as nonresponsive. See C. Iber & Sons, Inc., B-208365.2, Apr. 20, 1983, 83-1 C.P.D. ¶ 424. We have examined the bids in question here and find nothing in those bids that takes exception to any of the IFB requirements. By completing the bid schedule for the items on which they were bidding, and signing their bids, the challenged bidders obligated themselves to furnish products conforming to the specifications, descriptions, and qualification requirements listed for each item. The bidders' alleged failure to provide identifying information required under clause 52.209-1 did not eliminate or reduce this obligation. The bids therefore were responsive.

Responsibility refers to a bidder's apparent ability and capacity to perform all contract requirements, and is determined not at bid opening, but any time prior to award based on any information received by the agency up to that time. Great Lakes Dredge & Dock Co., B-221768, May 8, 1986, 86-1 C.P.D. ¶ 444. As noted, clause 52.209-1 provides that the bidders' products had to be qualified under appropriate standards only by the time of contract award. Obviously, it follows that bidders were to be permitted to furnish details under the clause after bid opening, as information on the qualification status of their offered products became available. Since bidders already had established their obligations to furnish qualified products in the bid schedule, this additional information related to bidder responsibility--whether the bidder was capable of satisfying the qualified product requirement--not responsiveness. The agency appears to consider the challenged bidders responsible; this determination is outside the ambit of our Office under the circumstances here. See 4 C.F.R. § 21.3(f)(1) (1986).

Since the clause clearly concerns bidder responsibility rather than responsiveness, we believe it would have been improper for GSA to reject any of the challenged bids at bid opening for failure to identify the offered products adequately in the bid, any suggestion in the clause to the

contrary notwithstanding.^{1/} As GSA points out in this regard, the terms of a solicitation cannot convert a matter of responsibility into one of responsiveness. The ARO Corp., B-222486, supra. Under the clause in question, a bid is acceptable so long as the procuring agency is able to determine the product offered prior to award, and GSA states it was able to do so with the challenged bids.

ARO's protest is denied.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel

^{1/} We did hold in D. Moody & Co., Inc., et al., 55 Comp. Gen. 1 (1975), 75-2 C.P.D. ¶ 1, that a bidder's failure to furnish any information identifying its offered qualified product warranted rejection of the bid as nonresponsive, but the clause in that case specifically required that products be qualified at the time of bid opening. See FAR, 48 C.F.R. § 52.209-1 (1984). This clause was changed in 1985 to allow qualification up until the time of award. See Federal Acquisition Circular 84-11 (Aug. 30, 1985).